

APPEAL NO. 022030  
FILED SEPTEMBER 20, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 23, 2002. The hearing officer determined that the appellant (claimant) had not sustained a compensable injury on \_\_\_\_\_.

The claimant appealed, attacking the credibility of the employer's witnesses (actually the claimant called the witnesses as adverse witnesses), questioning whether the hearing officer accurately weighed the evidence and in an addendum, timely filed as an appeal, asserts inadequate "representation" by the ombudsman assigned to assist him. The respondent (employer) responded, urging affirmance.

DECISION

Affirmed.

We first address the matter of the claimant's dissatisfaction with the assistance of the ombudsman. An ombudsman is not a representative and is available to a litigant only to assist in the litigant's own presentation of his or her case. Section 409.041. From our review of the record, it appears that the claimant was given the opportunity to present evidence, cross-examine witnesses and evidence presented by the employer, and argue his position. At the beginning of the CCH the hearing officer advised the claimant that the ombudsman was not an attorney and was there only to assist the claimant. The claimant announced on the record that he was ready to proceed. A review of the record does not reveal that the claimant made any request for continuance in order to have the services of another ombudsman who the claimant felt was more familiar with his case. There is no indication in the record of the hearing that the assistance the claimant received would warrant our reversal of this case on appeal.

The claimant, a truck driver, alleges that he sustained a compensable (lower back) injury on \_\_\_\_\_ driving or "pounding rebar". The carrier was apparently willing to accept liability but the employer contested compensability pursuant to Section 409.011(b)(4) and has thereby become the party of record in this case.

The evidence was in conflict and much of the testimonial evidence consisted of allegations of who said what to whom, regarding whether the claimant was going to lose his job because of a conviction for DWI, whether the claimant had quit because of demotion to do manual labor, and whether the claimant hurt himself during the weekend between the alleged injury and the claimant's first presentation for treatment on September 10, 2001.

All of those factors presented questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence.

Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was acting within his province as the fact finder in resolving the conflicts and inconsistencies in the evidence against the claimant. Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Susan M. Kelley  
Appeals Judge